

[\*Neely v. Tennessee Valley Authority\*](#), 90-ERA-42 (ALJ Sept. 12, 1990)

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**U.S. Department of Labor**  
Office of Administrative Law Judges  
525 Vine Street, Suite 900  
Cincinnati, Ohio 45202

Date Issued: Sept 12, 1990  
Case No. 90-ERA-42

In the Matter of

BILLY P. NEELY  
Complainant

versus

TENNESSEE VALLEY AUTHORITY  
Respondent

RECOMMENDED ORDER OF DISMISSAL

This case arises under the employee protection provisions of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. §5851. By way of a Notice of Hearing issued on May 31, 1990, the matter was scheduled to be heard on October 16, 1990, in Knoxville, Tennessee.

On September 7, 1990, there was transmitted to this office, a Joint Motion for Dismissal, together with a Conciliation Agreement which incorporates the understanding of the parties as to a basis for settlement of this case. The Conciliation Agreement consists of six pages and is signed by Billy B. Neely, the Complainant, Charles W. Van Beke, counsel for Complainant, and also Dwight E. Nunn, on behalf of the Respondent. The parties jointly move for an Order recommending dismissal of this case with full prejudice.

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Following due consideration of the Conciliation Agreement which is incorporated herein by this reference, I find it to be fair, adequate, and reasonable, and I believe it is in the public interest to adopt the Conciliation Agreement as a basis for the administrative

disposition of this case. This recommendation is being made pursuant to authority conferred by 29 C.F.R. §18.39(b).

RUDOLF L. JANSEN  
Administrative Law Judge

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BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES  
UNITED STATES OF AMERICA  
DEPARTMENT OF LABOR

Case No. 90-ERA-42

IN THE MATTER OF

BILLY B. NEELY  
Complainant

v.

TENNESSEE VALLEY AUTHORITY  
Respondent

JOINT MOTION FOR DISMISSAL

The parties hereby jointly move for an order recommending dismissal of this case with full prejudice. As grounds for said motion, the parties represent that they have completely conciliated the matters in controversy as shown by the attached agreement. A proposed recommended order of dismissal pursuant this motion is also attached.

WHEREFORE, premises considered, the parties move that the Administrative Law Judge enter a recommended order of dismissal of this proceeding with full prejudice.

Respectfully submitted,

Billy B. Neely  
Complainant

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### CONCILIATION AGREEMENT

WHEREAS, Billy B. Neely (Neely) filed a complaint on or about May 6, 1987, with the Department of Labor (DOL), alleging that the Tennessee Valley Authority (TVA) had discriminated against him in violation of Section 210 of the Energy Reorganization Act of 1974, 42 U.S.C. §5851 (1982) (ERA); and

WHEREAS, said complaint was settled on September 18, 1987, and the settlement documented in a September 21, 1987, memorandum from J. A. Kirkebo to Neely; and

WHEREAS, Neely subsequently sent three further ERA complaints, dated April 20 and June 7, 1989, and May 2, 1990, respectively, to DOL, alleging that the Tennessee Valley Authority (TVA) had breached the September 1987 agreement and discriminated against him in violation of the ERA; and

WHEREAS, by letters dated May 11 and May 23, 1990, the District Director of DOL's Wage and Hour Division (W&H) issued decisions on Neely's April 20 and June 7, 1989, and May 2, 1990, complaints; and

WHEREAS, TVA and Neely filed cross-appeals with DOL's Chief Administrative Law Judge and said appeals are designated No. 90-ERA-41 and NO. 90-ERA-42; and

WHEREAS, Neely subsequently sent two further ERA complaints, dated May 14 and August 8, 1990, respectively, to DOL and said complaints are pending investigation and decision by W&H; and

WHEREAS, on August 6, 1990, TVA gave Neely notice that his TVA employment would be terminated effective September 28, 1990, through a reduction in force; and

WHEREAS, Neely has expressed all of his nuclear- safety-related concerns as of the date of this agreement to his management; and

WHEREAS, TVA and Neely wish to conciliate all matters of controversy giving rise to Neely's ERA complaints;

THEREFORE, in consideration of the foregoing and of the matters hereinafter set forth, TVA and Neely agree as follows upon execution of this agreement:

W I T N E S S E T H:

1. TVA will offer and Neely will accept a temporary appointment to the position of Senior Project Manager, PG-9, in TVA's Facilities Design Group at Neely's current salary. Neely's temporary appointment will last until February 26, 1991; subject to his satisfactory performance and adherence to TVA's rules and regulations. It is the intent of the parties that this is the first date upon which Neely would qualify for the TVA Retirement System's "Rule of 80." At any time between the date of execution of this agreement and February 26, 1991, Neely may, at his request, be placed on leave without pay in lieu of using sick leave; and in such case TVA will continue to make contributions to the TVA Retirement System on Neely's behalf. TVA acknowledges that Neely is entitled to severance pay on the termination of his employment, unless TVA offers and Neely accepts a permanent TVA position. Neely will not initiate any judicial, administrative, or other proceeding challenging his separation from TVA employment pursuant to this agreement.

2. Between the date of the execution of this agreement and February 26, 1991, Neely shall be entitled to apply for and be considered for positions within TVA on the same basis as other TVA employees and without regard to his having filed ERA complaints. If Neely is selected for a different position, his salary in such position shall be determined in accordance with otherwise applicable TVA rules and regulations.

3. Neely's 1987, 1988, and 1989 service reviews will be reissued in the form attached hereto as exhibits A, B, and C, respectively, and the previous service reviews for those periods, if any, will be removed from Neely's personnel files and destroyed. TVA will make a lump-sum performance award of ,000 to Mr. Neely in connection with the change in the overall rating on the 1987 MAS. Mr. Neely's salary will not be changed as a result of the change in the overall rating.

4. TVA agrees to pay the legal costs and reasonable attorney fees incurred by Neely in this proceeding upon receipt and verification of an affidavit from his counsel stating the amount of expenses and fees actually incurred in representing Neely and properly billable to him, in an amount not exceeding \$26,467.90. In accordance with applicable regulations, TVA will restore 68 hours of annual leave used by Neely in connection with these cases. Because of operational demands, Mr. Neely can only be allowed to take 56 hours of annual leave during the remainder of leave year 1990 and operational requirements prevent the scheduling of 100 hours of the 156 hours of annual leave previously scheduled and approved. Accordingly, in accordance with applicable regulations, Mr. Neely will be allowed to carry over a total of 408 hours of annual leave into the 1991 leave year, including the 68 hours restored in connection with these cases and the 100 hours that would otherwise be forfeited. TVA will also reimburse him, in accordance with applicable regulations, for his travel costs in connection with attending meetings with DOL or TVA management.

5. Neely releases TVA, the TVA Board of Directors, and TVA's officers, agents, and employees from any and all actions, claims, demands, damages, and liabilities of every kind, at law or in equity, which he may have had through the date of this agreement, resulting from or in any manner related or incidental to the events identified in or which formed the basis for or could have been raised in his May 6, 1987, April 20 and June 7, 1989, and May 2 and,14, and August 8, 1990, ERA complaints. Neely agrees to withdraw his May 4 and August 8, 1990, ERA complaints by notifying DOL in writing of this conciliation agreement within two working days of its execution. Neely and his counsel also agree to execute joint motions to dismiss with prejudice No. 90-ERA-41 and No. 90-ERA-42, attaching this agreement to both notices.

6. TVA is not by this agreement or otherwise admitting any violation of the ERA or any other law or regulation, or any liability to Neely, or any jurisdiction of DOL with respect to the subject matter of his complaints.

7. The purpose of this agreement is to fully resolve and prohibit the assertion, reassertion, litigation, or relitigation of any and all claims and actions that have been or could have been asserted, initiated, or commenced through the date of this agreement by Neely against TVA, the TVA Board of Directors, and TVA's officers, agents, and employees for the recovery of back or future wages, other employment benefits, compensatory damages, punitive damages, or legal or equitable relief of any kind or nature, under any statute, regulation, or common law theory, in any way relating to or arising out of Neely's employment with TVA or the termination of that employment. Nothing in this agreement shall be construed to prohibit Neely from reporting any suspected instance of illegal activity of any nature, any nuclear safety concern, any workplace safety concern, or any public safety concern to the United States Nuclear Regulatory Commission, the United States Department of Labor, or any other Federal or State governmental agency, and shall not be construed to prohibit Neely from participating in any way in any State or Federal administrative, judicial, or legislative proceeding or investigation with respect to any claims and matters not resolved and terminated by the preceding paragraphs.

8. The September 1987 agreement resolving Neely's May 6, 1987, ERA complaint is hereby superseded.

IN WITNESS WHEREOF, the parties hereto and their attorneys have executed this agreement as of the day of , 1990.

Billy B. Neely

WAGNER, MYERS & SANGER, P.C.

By:

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